

## Staff Summary Report

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**Council Meeting Date:** 04-17-2008

**Agenda Item Number:** \_\_\_\_\_

**SUBJECT:** Request to award a five-year, sole source contract to Hansen Information Technologies for annual software maintenance for the City's Infrastructure Management System.

**DOCUMENT NAME:** 20080417fst07 **PURCHASES (1004-01)**

**SUPPORTING DOCS:** Yes

**COMMENTS:** (Sole Source #T08-157-01) Total cost for this contract shall not exceed \$400,000 during the contract period.

**PREPARED BY:** Ted Stallings, CPPB, Procurement Officer, 480-350-8617

**REVIEWED BY:** Michael Greene, CPM, Central Services Administrator, 480-350-8516  
Ted Hoffman, Deputy IT Manager, 480-350-2045  
Alan Tanana, Business Analyst, 480-350-2642

**LEGAL REVIEW AS  
TO CONTRACT FORM**

**ONLY:** Jenae Naumann, Assistant City Attorney, 480-350-8402

**FISCAL NOTE:** Sufficient funds have been appropriated in various City wide cost centers.

**RECOMMENDATION:** Award the contract.

**ADDITIONAL INFO:** City Originally started using Hansen's Information Technology Infrastructure Management System in 1998. Hansen Information Technologies is the sole provider of software maintenance for the City's Infrastructure Management System (IMS). The Infrastructure Management System is a computer based application which manages a variety of assets and associated maintenance activities. Included in the application is a comprehensive Warehouse Management system and direct interface to a Geographic Information Management (GIS) System. The application is currently deployed to six City Department/Divisions. Annual maintenance provides the City with maintenance, upgrades, and technical assistance. This contract will allow for the software maintenance and purchase of additional licenses.

# Memorandum

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TO: Donna Littrell, CPPB  
Central Services Administrator

FM: Gene Obis 08/02/2007  
Name of Department Head (Manager/Chief) Date

Information Technology  
Name of Department

## SUBJECT: Sole Source Determination

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As Head of the City Department for which the needed item(s) will be purchased, I have made a determination that only one (1) reasonable and practicable source exists to supply the required material. As such, I am authorizing the City Procurement Office to work with my Department to negotiate an acceptable contract with:

Hansen Information Technology  
Name of Supplier


Description of Item(s) to be purchased:


Refer to Requisition No. 151643, dated 8/7/07 which has been transmitted to the City Procurement Office to initiate this Sole Source purchase.

My (customer) department contact for this purchase is Alan Tanana at Ext. 2642.

My Sole Source determination is based upon extensive research conducted by my department as to possible suppliers for this need and a written justification is attached for City Procurement Office records.

As related to this purchase, there are no conflicts of interest, legal, ethical or preference issues which would compromise my (customer) department or this acquisition.

Department Head's Signature  Date 8-7-07

 apparent for release -  
4-3-08

City Procurement Ordinance 97.55, Sec. 26A-12 identifies the basis for a sole source procurement as follows:

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**SOLE SOURCE JUSTIFICATION  
HANSEN PRODUCTS (2007-2008)**

Hansen Information Technology is the manufacturer of the Hansen Infrastructure Management System, a computer application which has been used by the Water Utilities Department for twelve years to manage City owned water and wastewater assets and to administer Operation and Maintenance activities. More recently, the Information Technology Department, Public Works/Traffic Operations/Facilities Maintenance areas have begun to use the Hansen IMS application to maintain their own inventory of assets. This Sole Source will be used to provide funding for the licensing of the Hansen application for the period ending June 30<sup>th</sup> 2008.

The following is an estimate of costs for the deployment of the above described Hansen licenses for the period July 1st 2007 to June 30th, 2008:

Water Utilities Department	\$19,118.50
Information Technology Department	\$44,666.67
Public Works/Facilities Maintenance	\$ 800.00
Public Works/Traffic Operations	\$10,338.00
<b>Total</b>	<b>\$74,923.17</b>

“A purchase may be made or contract awarded by the procurement office without competition when the using department director determines in writing, after conducting a good faith review of available sources, that there is only one reasonable and practicable source for the required material or service. The using department requesting the sole source procurement shall provide written evidence to support a sole source determination. The procurement officer will participate with the using department in the conduct of negotiations, as appropriate, to price, delivery and terms. The procurement officer may require the submission of cost or pricing data in connection with a purchase or award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A record of sole source procurements shall be maintained as a public record.”

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**HANSEN® MASTER AGREEMENT**  
**GENERAL TERMS AND CONDITIONS**

**1.0 USE GRANT FOR LICENSED PROGRAMS:**

These General Terms and Conditions govern the license of certain Licensed Programs to Customer by Hansen® and, if applicable, the provision of certain Services to Customer by Hansen®. These General Terms and Conditions may be supplemented by one or more separate documents that shall be made a part of this Agreement, including:

- a) Exhibit "A" – Price Quote
- b) Exhibit "B" – License Use and Service & Maintenance Agreement ("SMA").
- c) Exhibit "C" – Statement of Work (including Project Timeline and Payment Milestone Schedule if requested)

However, in the event of any conflict between these General Terms and Conditions and any Exhibits or documents attached hereto, the General Terms and Conditions shall control.

**2.0 DEFINITIONS**

**2.1 Agreement** means this Agreement, together with all appendices, exhibits, schedules, attachments, and addenda as the same may be amended, modified or supplemented.

**2.2 Application Program Interface "API"** means the specific method prescribed by the Hansen application program by which a programmer writing an application program can make requests of the operating system or another application. Hansen's Application Program Interface ("API") is located in the business layer and is accessible for integration with third-party applications via Web Services, standard workflow customization, and Hansen-certified interface, conversion and application code.

**2.3 Authorized Users** means that number of either Named Users or Concurrent Users that have been licensed to use the Licensed Program in accordance with the General Terms and Conditions and the Exhibits attached hereto, Exhibit "A" shall specify whether the license is on a Named User or Concurrent User basis.

**2.4 CAL (Client Access License)** means a license granted to an individual Authorized User with the right to access the services of the server to add, modify, or delete data that is utilized in the Licensed Program on a non-exclusive and non-transferable basis in accordance with the Hansen Master Agreement and this Exhibit "B".

**2.5 Concurrent Users** means the aggregate number of end users of Customer that are authorized to access the Licensed Programs at any one single given time and may not exceed the number of Licenses the Customer has obtained.

**2.6 Configuration** means an arrangement of functional units and/or modules according to their nature, number or chief characteristics which will affect system performance and the ability of the Licensed Programs to be changed or customized.

**2.7 Customer** means the specific entity designated herein as the customer in the signature block below.

**2.8 Customization** means the customer-specific alterations to the Licensed Programs as allowed through supported Hansen functionality.

**2.9 Documentation** means all materials supplied by Hansen, whether in printed or online form or on magnetic tape or other media, that explain or facilitate the use of the Licensed Programs, which may include, without limitation, users' manuals, standard operational manuals

or instructions, training materials, flow charts, logic diagrams, system manuals, programming manuals and modification manuals.

**2.10 Intellectual Property ("IP") Rights** means any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing globally (a) rights associated with works of authorship existing globally, including but not limited to copyrights, moral rights, and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secret rights, (d) patents, design rights, and other industrial property rights, (e) all registrations, applications (including continuations, continuations-in-part, and divisions thereof), renewals, extensions, reissues and re-examinations thereof now or hereafter in force (including all rights in any of the foregoing), and (f) all other intellectual and industrial property rights (of every kind and nature and however designated) (including logos, "rental" rights and rights to remuneration), whether arising by operation of law, contract, license, or otherwise.

**2.11 Licensed Programs** means the software in object code form only that is specifically listed in Exhibit "A" hereto ("Price Quote") that Hansen licenses pursuant to this Agreement, together with any updates thereto supplied by Hansen, and any associated system and end-user Documentation supplied by Hansen.

**2.12 Licensee** means the specific organization designated in the applicable License Agreement and/or Purchase Order or an permitted successor assignee (whether by change of name, dissolution, merger, consolidation, reorganization or otherwise) to such corporation or division or organization or its business assets.

**2.13 Modification** means a change in form or character to the Licensed Programs in object code form.

**2.14 Named User** means a specific named employee of Customer that is assigned a unique log in identification and unique password to access the Licensed Programs.

**2.15 New Product** means a release of a Licensed Program and any associated user Documentation which Hansen in its sole discretion designates as a New Product, is marketed as a new product, and is made generally available as a new product.

**2.16 Party** means Customer and Hansen. References to "each Party" include Customer and Hansen. References to the "other Party," means, as to Customer, Hansen, and as to Hansen, such references mean Customer.

**2.17 Price Quote** means the listing of Hansen products, services and associated prices to be provided under this Agreement, attached to this Agreement as Exhibit "A".

**2.18 Products** means the machine-readable object code of the software programs specified in Exhibit A and/or a Purchase Order (in conjunction with a License quotation), together with any Documentation and Updates thereto.

**2.19 Purchase Order** means a non-cancelable, non-refundable Licensee order to obtain Products or Support Services that is signed by an authorized Licensee representative.

**2.20 Server** means Customer's computers capable of running Server Software, and to which other computers connect, in order for Authorized Users to access the Licensed Programs.

**2.21 Server Software** means a Licensed Program that provides

services or functionality on Customer's Server. A Server license is required for each of Hansen's Licensed Programs used by Customer.

**2.22 Services** shall mean, as applicable, support Services, maintenance Services, additional Services, and/or any other Services provided by Hansen under this Agreement.

**2.23 Source Code** means a collection of statements of which software programs are comprised, whether in written form or in magnetic or other machine-readable form, and characterized by the fact that it is intelligible in written form.

**2.24 Source Materials** shall mean a computer program's source code; printed copies (listings) of the source code; all related written materials, comments, and documentation; database schemas, and any and all other materials used by Hansen in the development, maintenance, and support of the products.

**2.25 Support Services** means product support services described in Exhibit B "License Use and Service & Maintenance ("SMA") and may be updated from time to time by Hansen.

**2.26 Updates** mean any update, release, change, new feature or enhancement to the Licensed Programs that Hansen markets and licenses to Customers that is provided under the annual Service & Maintenance Agreement ("SMA").

**2.27 Upgrades** mean major enhancements to the Licensed Programs reflecting a change in the underlying technology that drives the Licensed Programs.

**2.28 Work Product** means any resulting software (including all functional and technical designs, programs, modules, code, interfaces, algorithms, flowcharts, diagrams, documentation and the like) or any modifications or changes to the Licensed Programs and related materials created by Hansen after the effective date of this Agreement and in furtherance of the Statement of Work as set forth in Exhibit "C".

### **3.0 PAYMENT**

**3.1 General.** Fees for the Licensed Programs, Services fee(s) and all other amounts to be paid by Customer are set forth in separate documents and attached hereto as Exhibits. Pricing for Licensed Programs, Services, and SMA (per Exhibit B hereto attached and as described in Section 3.2.3 below) acquired outside of the United States shall be in the currency of the country in which the Licensed Programs, Services and SMA is being offered. References to all monetary amounts in the Agreement shall refer to the currency of the country in which the Services are being offered. Payment terms are net thirty (30) days from receipt of invoice.

**3.1.1 Past-Due Amounts.** Any amount outstanding for more than sixty (60) days after the date of invoice shall constitute a material breach on the part of Customer. Any late payment shall be subject to any costs of collection (including reasonable legal fees) and shall bear interest at the rate of one and one-half (1.5) percent, or the maximum rate allowed by law, whichever rate is less, per month or fraction thereof until paid. Hansen will separately invoice for Licensed Programs, professional Services, SMA, and hardware.

**3.1.2 Taxes.** Service fees are exclusive of any Taxes imposed on Service fees. Customer will be responsible for timely payment of any Taxes imposed on Service fees at the same time it pays the Service fees.

**3.2 Terms.** Unless otherwise noted on Exhibit "A" attached hereto, the following payment terms will apply:

**3.2.1 Licensed Programs.** Fees for the Licensed Programs for the full amount indicated on Exhibit "A" hereto shall be invoiced upon execution of this Agreement.

**3.2.2 Professional Services.** Fees for professional Services shall be invoiced monthly as incurred unless otherwise negotiated and agreed upon by both Hansen and customer in writing and documented on Exhibit A. If there is a change in scope initiated by Customer and additional days of Services are needed over and above the fees provided in Exhibit "A", a change order signed by both parties will be required. Any professional Services provided in excess of the days stated in Exhibit "A" due to a change of scope initiated by Customer and following the issuance of a change order signed by both parties will be charged at the unit price stated in Exhibit "A". Except as otherwise set forth in this Agreement, fees quoted for Services do not include and Customer shall reimburse Hansen for its reasonable cost of travel (air and cab fare, lodging, auto rental or local mileage, standard per diem, etc.) and out-of-pocket costs for photocopying, overnight courier, long-distance telephone and the like, which shall be invoiced at cost. Services outside the scope of those described above may be provided on a time and materials basis, flat fee basis, or may require on site work at a negotiated price.

**3.2.3 Service and Maintenance Agreement ("SMA") Fees.** Customer shall pay an annual SMA fee to Hansen as provided in Exhibit "A" hereto. The initial SMA fee shall be invoiced upon installation of the Licensed Programs. The annual SMA fee is payable in advance and shall remain the same as the previous year unless Customer is provided written notice of price change prior to the expiration of the then-current term. Annual increases shall not exceed standard Consumer Price Index from the current year fees for SMA. The annual fee will increase if Customer purchases additional Licensed Programs. Fees for SMA on new licenses acquired shall be applied at the same rate. If the price change is unacceptable to Customer, the Agreement will not renew if Customer so informs Hansen in writing no later than thirty (30) days prior to the end of the then-current term for SMA.

**3.2.4 Hardware.** Fees for Hardware (if any) pursuant to Exhibit "A" hereto shall be invoiced upon execution of this Agreement.

**3.3 CUSTOMER ADDRESS FOR HANSEN INVOICES TO BE SENT TO:**

Brigette Lesurf

City of Tempe  
P.O. Box 5002  
Tempe, AZ 85280

TEL: (480) 350-2920  
FAX: (480) 350-8841

### **4.0 USE OF LICENSED PROGRAMS**

**4.1 Internal Use.** Customer shall have a non-exclusive, non-transferable license to use the Licensed Programs as more specifically described in Exhibit "A" hereto, only for the number of Authorized Users specified in Exhibit "A" hereto, and subject to the restrictions of this Section 4. Customer's right to use the Licensed Programs, and use of the Documentation in connection therewith, is restricted to internal installation and use of the Licensed Programs in accordance with the applicable product-specific software license and use restrictions set forth in the Exhibits attached hereto and only for Customer's internal data processing requirements. Customer shall not sell, sublicense, rent, lease, or otherwise transfer the Licensed Programs, or make the Licensed Programs available in any form, to any third party, except as permitted herein.

**4.2 Reverse Engineering.** Customer shall not modify the Licensed Programs. Customer shall not cause, and shall not permit, the reverse engineering, disassembly, decompilation, translation or adaptation of the Licensed Programs, except to the extent expressly authorized by applicable law notwithstanding this limitation. Customers shall use best efforts to prevent its employees and contractors from violating this provision. Hansen shall own all rights in any copy, translation,

modification, adaptation, or derivative work of the Licensed Programs, including the Documentation and Source Materials, and Customer hereby assigns all rights to them (including moral rights) to Hansen.

**4.3 Source Code.** This license does not entitle Customer to any Source Code, Source Materials or other Confidential Information that Hansen elects to withhold. Upon request of Customer, Hansen may enter into a Source Code escrow agreement under terms and conditions acceptable to Hansen, provided the cost of the Source Code escrow is paid by the Customer.

**4.4 Reservation of Rights.** Hansen reserves all rights not expressly granted to Customer in this Agreement, including without limitation all Intellectual Property Rights.

**4.5 Passwords.** Customer shall be responsible for managing the assignment of passwords and login ids assigned for access to the Licensed Programs and for ensuring that such passwords and log in IDs are maintained as confidential and are only used by the individual person to whom they are provided and are not disclosed, shared or distributed to other persons or entities to enable them to obtain access to the Licensed Programs.

## **5.0 COPYING**

**5.1** Customer may make that number of copies of the object code version of the Licensed Programs that is reasonably necessary for disaster recovery, archiving, and backup ("Backup Copies"), provided such Backup Copies are only used for purposes of disaster recovery, archiving and backup and for no other purpose. Such Backup Copies are subject to the restrictions set forth in Section 4 herein.

**5.2** Customer shall ensure that any notice of copyright, trademark, or other proprietary rights notice placed by Hansen on the Licensed Programs or Documentation remain in evidence and are reproduced on any copies of the Licensed Programs and Documentation made by Customer.

## **6.0 INTELLECTUAL PROPERTY RIGHTS**

**6.1** Customer agrees that Hansen exclusively owns all right, title and interest, including all Intellectual Property Rights, in and to the Licensed Programs, Documentation, Source Code, Source Materials and Work Product. Customer shall not obtain any rights or title to any Intellectual Property Rights in the same except for the limited non-exclusive, non-transferable licenses granted in this Agreement. The Parties specifically acknowledge that the Work Product is not a "work made for hire" under the U.S. Copyright Law. The Parties further agree that the Work Product shall be deemed to be and become a part of the Licensed Programs for all purposes under this Agreement.

**6.2** If an action brought against Customer claiming that the Licensed Programs infringe any valid United States patent, or worldwide copyright or trade secret rights of a third party, Hansen shall defend Customer and shall pay the damages and costs finally awarded against Customer, or settlements entered into by Hansen on Customer's behalf, in the action, subject to Section 6.3, but only if (a) Customer notifies Hansen promptly and in writing upon learning that the claim might be asserted, (b) Hansen has sole control over the defense of the claim and any negotiation for its settlement or compromise, (c) Customer takes no action in defense of the claim, and (d) Customer cooperates and assists in the defense or settlement of the claim, as reasonably requested by Hansen, provided that any failure of Customer to meet the foregoing obligations shall only excuse Hansen to the extent that such failure impacts Hansen's ability to defend against such action.

**6.3** If Customer's use of the Licensed Programs is enjoined by a court of competent jurisdiction, or if Hansen wishes to minimize its liability hereunder, Hansen may, at its option and expense, either (a) substitute a substantially equivalent non-infringing item so that it no longer infringes but remains functionally equivalent, or (b) obtain for Customer the right to continue using such item. If none of the foregoing is commercially practicable, Hansen will accept a return of the Licensed Programs which are subject to the injunction and refund to Customer the license fee applicable thereto depreciated on a straight-line basis over five (5) years.

The indemnity in Section 6.2 will not apply if and to the extent that the infringement claim results from (a) a correction, modification or unauthorized merged portion of the Licensed Programs with items not provided by Hansen, (b) a failure to promptly install an update, (c) the combination of the Licensed Programs with items not provided by Hansen, or (d) the performance of Services or development of customizations to the license by Hansen pursuant to a specific design submitted by Customer.

## **6.4 THE FOREGOING STATES THE ENTIRE LIABILITY AND OBLIGATION OF HANSEN WITH RESPECT TO INFRINGEMENT OF CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT BY THE LICENSED PROGRAMS OR OTHERWISE ARISING OUT OF THIS AGREEMENT.**

## **7.0 TERM**

**7.1** The term of this Agreement shall commence upon the date the last Party executes this Agreement.

**7.2 License.** The license granted Customer herein for the Licensed Programs shall be for the period specified in Exhibit "A" Price Quote attached hereto (unless terminated as provided in this Agreement).

**7.3 Support and Maintenance Agreement.** SMA services shall commence upon Customer acceptance of the Licensed Programs or upon use of the Licensed Program in a live production environment, whichever occurs first. The initial term of this Agreement for SMA Services shall be for a period of one (1) year thereafter, and it shall renew automatically for additional terms of one (1) year each unless either Customer notifies Hansen or Hansen notifies Customer at least sixty (60) days prior to the end of the then-current term, in which event the term for such Services shall terminate at the end of such then-current term. Termination shall have no effect on Customer's obligation to pay the applicable labor rate (or an equitable portion of any fixed fee) with respect to Services rendered prior to the effective date of termination. Hansen shall not continue to provide SMA Services pursuant to Exhibit "B" hereto unless such Services are then-currently offered by Hansen and Customer is current in payment of all SMA charges.

## **8.0 TERMINATION**

**8.1 Breach.** Either party may terminate Services, and SMA under this Agreement, upon written notice, if the other party materially breaches this Agreement and fails to correct the breach within thirty (30) days following written notice specifying the breach.

**8.1.1** Licenses that have been paid in full may be terminated by Hansen for material breach of Licensed Programs pursuant to Section 4 herein which is not corrected within thirty (30) days following breach.

**8.1.2** Notwithstanding anything to the contrary in this Agreement, Hansen may terminate this Agreement (or at Hansen's sole discretion, suspend the provision of Services, including SMA Services) if Customer fails to cure any monetary breach of this Agreement (e.g. fails to pay amounts owed within ten (10) days of notice of the same). If Hansen suspends a service pursuant to this Section 8.1.2, unless Hansen has subsequently terminated this Agreement as permitted herein, Hansen will resume the discontinued service within twenty-four (24) hours after it is reasonably satisfied Customer has cured the breach(es) which gave rise to Hansen's right to suspend Services. Hansen may charge a reinstatement fee of Two Thousand and Five Hundred Dollars (\$2,500).

**8.2 Insolvency.** This Agreement shall terminate immediately upon notice by either Party if the other Party has a receiver appointed, or makes an assignment for the benefit of creditors, or in the event of any insolvency or inability to pay debts as they become due, except as may be prohibited by applicable bankruptcy laws.

**8.3 Convenience.** Customer and/or Hansen may terminate this Agreement, or any part hereof, for its sole convenience by giving thirty (30) days written notice of termination to the other party in accordance with Section 13 of this Agreement. Upon receipt of such notice, Hansen

shall, unless otherwise specified in the notice, immediately stop all work hereunder and, to the extent permitted under each applicable subcontract or Agreement, give prompt written notice to suppliers and subcontractors to cease all related work. Hansen shall be paid the price specified in Exhibit A for all work performed hereunder as of the date of termination notice, such payment to be made within thirty (30) business days after Hansen delivers such work to Customer, in its then current form, free and clear of all liens. Hansen shall not be paid for any work done after receipt of such notice, for any costs incurred by Hansen's suppliers or subcontractors after receipt of Customer's termination notice, or for work which Hansen could reasonably have avoided.

**8.4 Return/Destroy.** Upon termination of licenses under this Agreement for any reason, Customer shall cease use of and shall return or destroy, at Hansen's option and at Customer's sole expense, all Licensed Programs, including Documentation, belonging to Hansen. All copies made shall be destroyed by Customer and Customer shall provide written certification of such destruction.

**8.5 Survival.** Termination will not discharge either party of any obligations hereunder or from payments of sums due. *Sections 3, 6, 8.4, 10, 11, 12, 13, 18 and 19 shall expressly survive termination of this Agreement.*

#### **9.0 LIMITED WARRANTY**

**9.1 Licensed Programs.** Hansen warrants that the Licensed Programs will, upon acceptance and for a period of ninety (90) days thereafter, be free of any material or frequent errors, where an error means any material failure to perform in accordance with Hansen's written specifications or Documentation applicable thereto. If Hansen receives notification within this warranty period of any defects or problems, and such notification is accurate, Hansen shall use commercially reasonable efforts to correct such defects or problems. The above warranties specifically exclude defects resulting from accident, abuse, unauthorized repair, misapplications, modification, combinations, merged portions or enhancements not supplied by Hansen. Hansen does not warrant that use of the Licensed Programs will be uninterrupted or error free. The foregoing states Customer's exclusive remedy and Hansen's entire liability for any breach of this limited warranty set forth in this Section 9.1.

**9.2 Services.** Hansen warrants that any Services provided by it hereunder will be performed consistent with generally accepted industry standards. This warranty shall be in effect for thirty (30) days from performance of the applicable Service. Any deficiencies in such Service must be reported in writing within thirty (30) days from performance of the applicable Service. For any breach of the foregoing warranty, Customer's exclusive remedy, and Hansen's entire liability, shall be the re-performance of such deficient Service.

**9.3 EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 9, THERE ARE NO WARRANTIES, CONDITIONS, OR REPRESENTATIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE LICENSED PROGRAMS, DOCUMENTATION AND ANY OTHER SOFTWARE, MATERIALS OR SERVICES PROVIDED BY HANSEN HEREUNDER, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY OR MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, ALL SUCH WARRANTIES BEING HEREBY FULLY DISCLAIMED.**

**9.4** Licensed Programs are not designed or intended for use as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the software could lead directly to death, personal injury, or severe physical or environmental damage ("high risk activities").

#### **10.0 LIMITATION OF LIABILITY**

**10.1 EXCEPT AS SPECIFIED IN SECTIONS 6.2, 6.3 AND 6.4 OF**

**THIS AGREEMENT, HANSEN'S LIABILITY TO CUSTOMER OR ANY OTHER THIRD PARTY FOR A CLAIM OF ANY KIND ARISING AS A RESULT OF, OR RELATED TO, ANY LICENSED PROGRAMS, DOCUMENTATION OR ANY OTHER SOFTWARE, MATERIALS OR SERVICES PROVIDED OR DEVELOPED PURSUANT TO THIS AGREEMENT, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), UNDER ANY WARRANTY, OR OTHERWISE, SHALL BE LIMITED TO MONETARY DAMAGES, AND THE AGGREGATE AMOUNT THEREOF FOR ALL SUCH CLAIMS SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO AMOUNT PAID. THIS LIMIT SHALL NOT APPLY TO CLAIMS FOR PERSONAL INJURY, DAMAGE TO TANGIBLE PROPERTY, OR DAMAGES RESULTING FROM WILLFUL MISCONDUCT, OR A VIOLATION OF LAW.**

**10.2 CUSTOMER WILL INDEMNIFY HANSEN AND ITS AFFILIATES FOR, AND HOLD THEM HARMLESS FROM, ANY LOSS, EXPENSE (INCLUDING REASONABLE ATTORNEY'S FEES AND COURT COSTS), DAMAGE OR LIABILITY ARISING OUT OF ANY CLAIM, DEMAND OR SUIT RESULTING FROM CUSTOMER'S NEGLIGENCE, VIOLATION OF ANY LAWS CONCERNING OBSCENITY, DEFAMATION, INFRINGEMENT, RIGHTS OF PRIVACY OR PUBLICITY, HARASSMENT OR EXPORT CONTROLS.**

**10.3 UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR COSTS OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

#### **11.0 CONFIDENTIALITY**

**11.1** Except as expressly permitted in this Agreement, no Party will, without the prior written consent of the other Party, disclose any Confidential Information of the other Party to any third party. Information will be considered Confidential Information of a Party if either (i) it is disclosed by the Party to the other Party in tangible form and is conspicuously marked "Confidential", "Proprietary" or the like; or (ii) (a) it is disclosed by a Party to the other Party in non-tangible form and is identified as confidential at the time of disclosure; and (b) it contains the disclosing Party's customer lists, customer information, technical information, pricing information, pricing methodologies, or information regarding the disclosing Party's business planning or business operations. In addition, notwithstanding anything in this Agreement to the contrary, the terms of this Agreement will be deemed Confidential Information of each Party. For avoidance of doubt, Customer agrees that Hansen's Confidential Information includes, but is not limited to, the software, Documentation Source Materials, Source Code, Work Product, and any data structures, data dictionaries, data fields, as well as the architecture and structure of the Licensed Programs.

**11.2** Other than the terms and conditions of this Agreement, information will not be deemed Confidential Information hereunder if such information (i) is known to the receiving Party prior to receipt from the disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (ii) becomes known (independently of disclosure by the disclosing Party) to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving Party; (iv) is disclosed after the end of the Term; or (v) is independently developed by the receiving Party. Notwithstanding the foregoing, the terms and conditions of this Agreement will cease being confidential if, and only to the extent that, they become publicly known, except through a breach of this Agreement by the receiving Party.

**11.3** The receiving Party shall carefully restrict access to the Confidential Information to those officers, directors, employees, contractors and subcontractors who clearly need such access in order to



participate in the potential business relationship referred to above. The Receiving Party further warrants and represents that it will advise each of the persons to whom it provides access to any of the Confidential Information, in conformance with the terms of this Agreement, that such persons are strictly prohibited from making any use, publishing, or otherwise disclosing to others, or permitting others to use for their benefit or to the detriment of the Disclosing Party, any Confidential Information. The receiving Party shall bind all those officers, directors, employees, and contractors who clearly need such access in order to participate in the business, the potential business relationship referred to above to a Confidentiality Agreement that is no less restrictive than this Section 11 herein.

**11.4** Each Party will secure and protect the Confidential Information of the other Party (including, without limitation, the terms of this Agreement) in a manner consistent with the steps taken to protect its own trade secrets and Confidential Information, but not less than a reasonable degree of care. Each Party may disclose the other Party's Confidential Information where (i) the disclosure is required by applicable law or regulation or by an order of a court or other governmental body having jurisdiction after giving reasonable notice to the other Party with adequate time for such other Party to seek a protective order; (ii) if in the opinion of counsel for such Party, disclosure is advisable under any applicable securities laws regarding public disclosure of business information; or (iii) the disclosure is reasonably necessary and is to that Party's, or its Affiliates', employees, officers, directors, attorneys, accountants and other advisors, or the disclosure is otherwise necessary for a Party to exercise its rights and perform its obligations under this Agreement, so long as in all cases the disclosure is no broader than necessary and the person or entity who receives the disclosure agrees prior to receiving the disclosure to keep the information confidential. Each Party is responsible for ensuring that any Confidential Information of the other Party that the first Party discloses pursuant to this Agreement (other than disclosures pursuant to clauses (i) and (ii) above that cannot be kept confidential by the first Party) is kept confidential by the person receiving the disclosure.

## **12.0 ASSIGNMENT**

**12.1** Customer shall not assign or otherwise transfer its rights under this Agreement without the prior written consent of Hansen. Any permitted transfer of the Licensed Programs must include the most recent update and all prior versions. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their successors and assigns.

## **13.0 NOTICES**

**13.1** Except where otherwise expressly stated in the Agreement, (and regardless of whether certain provisions in this Agreement expressly require written notice, consent or approval) all notices, consents, or approvals required by this Agreement will only be effective if in writing and sent by (i) certified or registered air mail, postage prepaid, (ii) overnight delivery requiring a signature upon receipt, (iii) delivery by hand, or (iv) facsimile or electronic mail (promptly confirmed by certified or registered mail or overnight delivery), to the parties at the respective street addresses, facsimile numbers, or electronic mail addresses set forth at the end of this Agreement or such other addresses or facsimile numbers as may be designated in writing by the respective parties. Notices, consents and approvals will be deemed effective on the date of receipt, or in the case of notice sent by Registered, Certified or Priority Paid Mail, five (5) days after mailing.

Scott Wright, CFO

Jenae Naumann

Hansen Information  
Technologies  
11092 Sun Center Drive  
Rancho Cordova, CA  
95670-6109

T: (916) 921-0883  
F: (916) 921-6620

City of Tempe, AZ  
P.O. Box 5002  
20 E. 6<sup>th</sup> Street  
Tempe, AZ  
85281

T: (480) 350-8402  
F: (480) 350-8645

## **14.0 INSURANCE**

**14.1** Hansen shall maintain adequate insurance protection covering its activities hereunder, including, but not limited to coverage for statutory workers' compensation, comprehensive general liability of \$1,000,000 per occurrence with a \$2,000,000 aggregate for bodily injury, property damage, personal injury, and blanket contractual covering, but not limited to the liability assumed under the Intellectual Property Rights (excluding claims arising from infringement of patents or misappropriation of trade secrets) and Limitation of Liability provisions of this Agreement, as well as \$1,000,000 of commercial automobile coverage for vehicles. Hansen shall provide Customer with certificates of insurance for each of these coverage types. Except for worker's compensation insurance, Hansen shall name Customer as an additional insured on its insurance policies, and such policies shall require sixty (60) days prior written notice to Customer for any coverage change.

## **15.0 CLASSIFIED, RESTRICTED DATA**

**15.1** Each party agrees to inform the other of any information made available to the other that is classified or restricted data, agrees to comply with the security requirements imposed by any provincial or local government, or by the Government of the country in which the products have been sold, and shall return all such material upon request. Each party warrants that its participation in this Agreement does not create any conflict of interest prohibited by the United States, Canadian, Australian, New Zealand or United Kingdom Governments, or any other domestic or foreign Government, and shall promptly notify the other party if any such conflict arises during the Term.

## **16.0 FORCE MAJEURE**

**16.1** Neither Party will be responsible or in any way liable, arising out of or relating to any failure by either Party to perform or any hindrance in the performance of its obligations under this Agreement if such failure or hindrance is caused by events or circumstances beyond such party's control, including acts of God, war, labor strike, terrorist act, fire, flood, earthquake, any law, order, regulation or other action of any governing authority or agency thereof, or failure of the Internet, (each a "Force Majeure Event"), provided that the parties hereto agree to give notice to the other upon becoming aware of a Force Majeure Event and a Force Majeure Event does not excuse Customer's failure to pay fees due Hansen hereunder. Such notice shall contain details of the circumstances giving rise to the Force Majeure Event. If a default due to a Force Majeure Event shall continue for more than three (3) months then the party not in default shall be entitled to terminate this Agreement upon fifteen (15) days prior written notice as a result of a Force Majeure Event.

## **17.0 PUBLICITY**

**17.1** Neither Party may issue any press release regarding this Agreement or the Parties' business relationship without the prior written approval of the other Party.

## **18.0 AUDIT RIGHTS**

**18.1** Hansen, or Hansen's designated agent, may upon five (5) days written notice to Licensee, inspect any Licensee facility where Licensed Programs are used and audit records for the purpose of confirming Licensee's compliance with this Agreement. The audit shall be performed at Hansen's sole expense; provided however, that if, as a result of Hansen's audit, it is determined that Licensee owes Hansen additional fees, then Licensee shall bear the reasonable cost of Hansen's



audit and pay all past-due fees, in addition to such other remedies as Hansen may have.

#### 19.0 GENERAL

19.1 In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions contained in this Agreement.

19.2 The Parties are independent contractors and neither Party is an employee, agent, partner, or joint venturer of the other. Neither Party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other Party.

19.3 This Agreement shall be construed in accordance with the laws of Arizona and by all applicable Municipal Ordinance or Codes of Customer. Suits, if any, shall be brought in Arizona. Parties agree that prior to filing a lawsuit; they will pursue non-binding dispute resolution pursuant to this Agreement.

19.4 Notwithstanding the foregoing: i) any claim or controversy related to the Intellectual Property Rights of the parties, including but not limited to, any controversy as to whether or not certain information is Confidential Information, and including the contesting of any claim of ownership of Intellectual Property Rights, and including any claim as to whether or not there has been a breach of any parties' rights as to such property, shall not be determined by arbitration, but only by a court located in Arizona, to whose exclusive jurisdiction and venue the parties hereby consent; and ii) the parties acknowledge that any breach of their respective obligations under this Agreement with respect to the proprietary rights or Confidential Information will cause the other party irreparable harm, and therefore such party will be entitled to equitable relief in addition to all other remedies provided by this Agreement or available at law, in any court of competent jurisdiction.

19.5 Customer hereby acknowledges that the Licensed Programs are subject to export controls, pursuant to U.S. Export Administration Regulations and the export laws and regulations of other countries ("Export Laws"). Customer shall comply with all applicable Export Laws, and shall not export, re-export, transfer, divert or disclose, directly or indirectly, including via remote access, the Licensed Programs, any Confidential Information contained or embodied in the Licensed Programs, or any direct product thereof, except as authorized under the Export Laws.

19.6 Both Customer and Hansen shall be an Equal Employment Opportunity employer and shall conform to all EEO, Affirmative Action and other applicable requirements dictated by Federal and local laws.

Customer shall neither discriminate nor permit discrimination in its operations or employment practices against any person or group of persons on the grounds of race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, medical status or any other universal legally protected characteristic in any manner prohibited by law.

19.7 Any waiver of any provision or breach of this Agreement must be in writing and shall not constitute a waiver of any other provision or breach.

19.8 This Agreement shall be executed in two (2) or more counterparts or duplicate originals, all of which shall be regarded as one and the same instrument, and which shall be the official and governing version in the interpretation of this Agreement.

19.9 This Agreement supersedes all prior agreements and understandings between the parties related to the subject matter hereof and is intended by the Parties as the complete and exclusive statement of the terms of the agreement between the Parties. This Agreement shall not be modified, except by written agreement signed by both Parties hereto. The terms and conditions of this Agreement shall apply notwithstanding any additional or different terms and conditions of any Purchase Order or other instrument submitted by Customer, which terms and conditions shall be void and of no effect.

#### 20.0 AVAILABILITY OF FUNDS

The Customer's obligation for performance herein is contingent upon the availability of funds from which payment for contract purposes can be made. No legal liability on the part of the Customer for any payment may arise for performance herein beyond the current fiscal year until funds are made available for performance of this contract.

#### 21.0 CONFLICT OF INTEREST

Pursuant to A.R.S. § 38-511, CITY may cancel this Agreement within three (3) years after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of CITY is or becomes at any time while the Agreement or an extension of the Agreement is in effect an employee of or a consultant to any other party to this Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when Hansen receives written notice of the cancellation unless the notice specifies a later time.

IN WITNESS WHEREOF, and intending to be legally bound, the undersigned hereby represent and warrant that they are duly authorized to sign and enter into this Agreement on behalf of their respective parties, and the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

HANSEN INFORMATION TECHNOLOGIES

By: 

Name: Gregory M. Giangordano  
SVP & General Counsel

Title: \_\_\_\_\_

Date: 4 April 2008

CITY OF TEMPE, ARIZONA

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT "B" TO HANSEN® MASTER AGREEMENT

HANSEN® LICENSE USE and SERVICE & MAINTENANCE AGREEMENT

This Exhibit "B" is subject and made a part of the Hansen Master Agreement. In the event of any conflict between this Exhibit "B" and the Hansen Master Agreement, the terms of the Hansen Master Agreement shall control, except that Sections 4 and 5 shall prevail over any conflicting terms in the Hansen Master Agreement.

**1.0 Definitions.** All definitions shall have the same meanings as those given in the Hansen Master Agreement General Terms and Conditions.

**2.0 License Granted.** Hansen grants Customer the following rights to the Licensed Programs described on Exhibit "A" hereto. License rights are granted to Customer on a non-exclusive and non-transferable basis provided that Customer complies with all terms and conditions of the Hansen Master Agreement and this Exhibit "B". Customer shall also be required to purchase a minimum of one (1) Software License for Business Objects Crystal Reports Server XI or above in order to create/design reports, manage/deliver enterprise reporting and report integration into Windows and web applications.

**2.1 CAL License Requirements.** Customer must purchase a separate CAL license for each authorized individual who needs to add, modify, or delete data utilized in the Licensed Programs for which Server licenses have been purchased. *Currently "View Only" licenses are provided at no charge. Hansen reserves the right to modify this pricing in the future.*

**2.2 Installation — Server Software.** Customer may install and use one copy of the Server Software on a single or clustered server environment, owned or controlled by Customer, for access only by Authorized Users for whom Customers have purchased CALs. Customer may install a development and a training/test instance, but only one production instance of the Server Software. A web clustered environment or "fail-over" server will not require additional licenses.

**2.3 Downgrades.** Instead of installing and using the version of the Server Software listed in Exhibit "A", with notice to Hansen and Hansen's permission, Customer may install and use one copy of an earlier version of the Server Software on a single processor for access only by Authorized Users for whom Customer has purchased CALs, provided that Customer completely removes such earlier version and installs the original Server Software within a reasonable time. Customer's use of such earlier version shall be governed by this Agreement, and Customer's rights to use such earlier version shall terminate when Customer installs the original Licensed Program.

**2.4 Allowed Modifications**

**2.4.1 Hansen 8.** Customers that have licensed Hansen 8 will have the ability and authorization to make the following Modifications (defined as a change in form or character to the Licensed Programs in object code form) using the Content and Schema Manager tools provided within the Hansen 8 system to their installed version of that software only:

- a) Modify Hansen Web form pages;
- b) Add workflow and custom formulae processing to Hansen business objects;
- c) Add formulae processing that affect the common progression of specified business process;
- d) Create custom detail pages that are appended to existing Hansen presentation forms;

Customer is authorized to make extensions to the database schemas and workflows as provided by the functionality of the product. Hansen's Application Program Interface ("API") is located in the business layer and is accessible for integration with third-party applications via Web Services only. The business layer is also able to be accessed using the schema Hansen Master Agreement

Exhibit B – License Use & SMA  
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Contract #US-T06006dj

and content managers to allow for Customer to reuse the business knowledge encapsulated in these objects for personalized use of the Hansen 8 framework. Furthermore, Customer understands that any individual characteristic or component supplied by Hansen, each of which, by itself, may be in the public domain, but is contained in the unified Hansen process, design and operation of its products, represents a unique combination and affords a competitive advantage and is a protectable trade secret of Hansen. Customer shall only use such modifications in connection with Customer's own use of the Licensed Programs under the Hansen Master Agreement and not in connection with any software products of any other party. In addition, nothing in this Agreement shall prevent Hansen from offering other customers the right to use modifications, even if similar to modifications made by Customer. *Hansen reserves the right to modify the API for upcoming software releases.*

**2.4.2 DynamicPortal®** Customers that have licensed DynamicPortal® for Hansen 8 will have the ability and authorization to make the Modifications and Customizations to their installed version of that software only:

The Licensed Program for DynamicPortal® may include portions of the Source Code for the product for the purpose of providing Customer with the ability to make Customizations to the Licensed Program. Customer agrees to maintain in confidence the Source Code by using the strictest standard of security measures to maintain confidential technical information and documentation. Customer will not disclose the Source Code, or any aspect thereof, to anyone other than employees who have a need to know and are bound to protect such information against any other use or disclosure. Hansen's API is provided through future web services to be supplied upon Hansen's time schedule. This allows Customer to reuse the business knowledge encapsulated in these objects for personalized use of the Hansen 8 framework. Furthermore, Customer understands that any individual characteristic or component supplied by Hansen, each of which, by itself, may be in the public domain, but is contained in the unified Hansen process, design and operation of its products, represents a unique combination and affords a competitive advantage and is a protectable trade secret of Hansen. Customer shall only use such Modifications and Customizations in connection with Customer's own use of the Licensed Programs under the Hansen Master Agreement and not in connection with any software products of any other party. In addition, nothing in this Agreement shall prevent Hansen from offering other customers the right to use Modifications and Customizations, even if similar to Modifications and Customizations made by Customer.

**2.4.3 Version 7.x.** Customers that have licensed Hansen Version 7.x will have the ability and authorization to create Workbench Tabs, add Menu Items, and create formulae using the Formulae Editor. Purchase of the Custom Tab and Menu Editors modules is required for the creation of Workbench Tabs and adding Menu Items. Customer understands that any individual characteristic or component supplied by Hansen, each of which, by itself, may be in the public domain, but is contained in the unified Hansen process, design and operation of its products, represents a unique combination and affords a competitive advantage and is a protectable trade secret of Hansen. Customer shall only use such modifications in connection with their use of the Licensed Programs and not in connection with any software products of any other party. In addition, nothing in this Agreement shall prevent Hansen from offering other customers the right to use modifications, even if similar to modifications made by Customers.

**3.0 Term.** The license granted by this Agreement is for perpetuity, unless violated by Customer or otherwise canceled by Customer.

**4.0 Tryout, Product Sampler, Not For Release (NFR) Additional Terms.** If the Licensed Program Customer has received with this Agreement is a tryout, product sampler, or NFR copy of the Software ("Tryout Software"), then the following Section applies until such time that Customer purchases a license to the full version of such product. To the extent that any provision in this Section is in conflict with any other term or condition in this Agreement, this Section shall supersede such other term(s) and condition(s) with respect to the Tryout Software, but only to the extent necessary to resolve the conflict. **CUSTOMER ACKNOWLEDGES THAT THE TRYOUT SOFTWARE CONTAINS LIMITED FUNCTIONALITY AND/OR FUNCTIONS FOR A LIMITED PERIOD OF TIME. HANSEN IS LICENSING THE SOFTWARE ON AN "AS IS" BASIS, SOLELY AS A DEMONSTRATION MODEL.** If the Tryout Software is a timeout version, then the program will terminate operations after a designated period of time (e.g. 15, 30, or 45 days) following installation (the "Time Out Date"), which is specified in the Software. Upon such Time Out Date, the license hereunder shall be terminated, unless extended by Hansen upon Customer's purchase of a full license from Hansen. Customer acknowledges that such Tryout Software shall cease operation upon the Time Out Date and accordingly, access to any files or output created with such Tryout Software or any product associated with the Tryout Software is done entirely at your own risk. **HANSEN DISCLAIMS ANY WARRANTY OR LIABILITY OBLIGATIONS TO CUSTOMER OF ANY KIND, INCLUDING, WHERE LEGAL LIABILITY CANNOT BE EXCLUDED FOR PRE-RELEASE SOFTWARE, BUT IT MAY BE LIMITED, HANSEN'S LIABILITY AND THAT OF ITS SUPPLIERS SHALL BE LIMITED TO THE SUM OF FIFTY DOLLARS (U.S. \$50) IN TOTAL.**

**"CUSTOMER INITIALS" and DATE**

**5.0 Pre-Release Product Additional Terms.** If the Licensed Program Customer receives with this license is a pre-commercial release, "Alpha" (Development) or "Beta" (Production Testing) Licensed Program (collectively the "Pre-release Program"), then the following section applies. To the extent that any provision in this section is in conflict with any other term or condition in this Agreement, this Section shall supersede such other term(s) and condition(s) with respect to the Pre-release Program, but only to the extent necessary to resolve the conflict. Customer acknowledges that the Licensed Program is a pre-release version, does not represent final product from Hansen, and may contain bugs, errors and other problems that could cause system or other failures and data loss. **CONSEQUENTLY, THE PRE-RELEASE PROGRAM IS PROVIDED TO CUSTOMER "AS-IS", AND HANSEN DISCLAIMS ANY WARRANTY OR LIABILITY OBLIGATIONS TO CUSTOMER OF ANY KIND, WHERE LIABILITY CANNOT BE EXCLUDED FOR PRE-RELEASE SOFTWARE, BUT IT MAY BE LIMITED, HANSEN'S LIABILITY SHALL BE LIMITED TO THE SUM OF FIFTY DOLLARS (U.S. \$50) IN TOTAL.** Customer acknowledges that Hansen has not promised or guaranteed to Customer that Pre-release Program will be announced or made available to anyone in the future, Hansen has no express or implied obligation to Customer to announce or introduce the Pre-release Program and that Hansen may not introduce a product similar to or compatible with the Pre-release Program. Accordingly, Customer acknowledges that any research or development that Customer performs regarding the Pre-release Program or any product associated with the Pre-release Program is done entirely at Customer's own risk. During the term of this Agreement, if requested by Hansen, Customer will provide feedback to Hansen regarding testing and use of the Pre-release Program, including error or bug reports. Hansen shall own and shall have the unlimited right to use such feedback in its sole discretion without further obligation to Customer. Customer agrees that Customer may not and certifies that Customer will not sublicense, lease, loan, rent, assign or transfer the Pre-release Program. Upon receipt of a later unreleased version of the Pre-release Program or release by Hansen of a publicly released commercial version of the Program, whether as a stand-alone product or as part of a larger product, Customer agrees to return or destroy all earlier versions of Pre-release Program received from Hansen and to abide by the terms of the license agreement for any such later versions of the Pre-release Program. Notwithstanding anything in this Section to the contrary, Customer agrees

that Customer will return or destroy all unreleased versions of the Pre-release Program within thirty (30) days of the completion of Customer testing of the Licensed Program when such date is earlier than the date for Hansen's first commercial shipment of the Licensed Program that is publicly released.

**"CUSTOMER INITIALS" and DATE**

**6.0 Maintenance Services Included.** Provided Customer has paid the annual fees for maintenance, Hansen agrees to provide the following maintenance Services on Customer's Licensed Programs as set forth in Exhibit "A" during the term set forth in Section 7.3 of the Hansen Master Agreement, provided that such Licensed Programs are running on the current operating systems identified on Hansen's member support web page.

- a) Hansen will maintain the Licensed Programs so that it operates in conformity and in all material respects with Hansen's descriptions and specifications for the Licensed Programs.
- b) In the event that Customer detects any errors or defects in the Licensed Programs, Hansen will provide reasonable telephone support, in the form of assistance and advice on the use and maintenance of the Licensed Programs, during the hours of 5:00 AM – 5:00 PM Pacific time, Monday through Friday, via a toll-free 800 number (800-8-HANSEN). There shall be no charge to Customer for Hansen services in the correction of errors or defects in the Licensed Programs. Hansen shall correct any nonconformance within a mutually agreed time of which it has been properly notified by Customer.
- c) Hansen will send Customer informational announcement mailings on Upgrades, Updates, and New Products of the Licensed Programs to the Customer's designated address.
  - i) Hansen shall provide Customer with Updates of the Licensed Programs applicable to Customer's specific version of Hansen application within the same operating environment.
  - ii) Customer shall be entitled to acquire a license to New Products at Hansen's then-current license fees
  - iii) Hansen will only provide support and maintenance on software that are up to two (2) version releases behind Hansen's current release.
  - iv) Maintenance and Support for DynamicPortal® includes updates to templates.
- d) Updates will be sent on CDs, DVDs, or any other mutually-agreed upon transmission method with explanations, instructions and updated documentation where appropriate. Hansen will also make other installation developments, such as reports, interfaces, etc. available to Customer if they are appropriate for possible use by Customer.

**7.0 Maintenance Services Not Included.** Maintenance service shall not include the items listed within this section 7.0 herein. However, at additional cost and upon mutual agreement by both Parties, such Services may be provided by Hansen.

- a) Any and all Customization (defined as Customer-specific alterations to the Licensed Program Source Code) and training related to the application of the Customizations.
- b) Support of any Modifications made to Licensed Programs or any part thereof made by Customer or for Customer by persons other than Hansen personnel;
- c) Services for any and all problems which are subsequently determined by Hansen to be a non-Hansen system problem or not substantially caused by Hansen, including problems with the hardware, third party applications, operating systems, data, damage or matters generally beyond the control of Hansen, such as;
  - (i) use or operation of the Licensed Programs except in accordance with its applicable and current Documentation and licensed rights;
  - (ii) failure of a suitable operating environment for the systems supporting Licensed Programs;
  - (iii) errors, omissions, damages or wrongful acts by an operator, user or third-party personnel;

(iv) repairs, maintenance, alterations, relocation, copying, tampering, interfacing or other conduct not duly authorized by Hansen;

(v) operation on or in association with hardware, software or databases not authorized by Hansen or not recommended for the Licensed Programs;

(vi) external causes such as electrostatic or environmental conditions and accidents including fire, water and lightning.

(vii) interoperation with other systems that are no longer supported by their vendor where the other system contains a bug or problem causing the Licensed Program or itself to error.

d) Support of application software that is running on outdated operating systems. Distribution of updates and enhancements, telephone support and functional corrections will only be made available for current operating systems. Customer is responsible for maintaining compliance with the "industry standard" version of the operating system being used in production. Customer should determine that an upgraded version of a component part of the Hansen product (Oracle for example) has been certified prior to installation.

e) Activity required related to the loss of data due to insufficient backup files. Customer is responsible for following standard backup procedures to ensure data integrity.

f) Data conversions and problems associated with data conversions are not covered under this Agreement.

g) Installation of Licensed Programs is not covered under this Agreement. The Help Desk will not assist with installation of Licensed Programs.

h) Hansen will not provide support and maintenance on software that is more than two (2) version releases behind Hansen's current release.

i) Upgrades are not covered under annual SMA.

j) Any service not covered in Section 2 above.

#### **8.0 Hansen System Defect Classifications.**

It is recognized that despite the precautions associated with software, defects may be encountered. These defects are defined in criticality categories:

a) **Category I – System failure.** Software does not work, data cannot be input, reviewed, or revised. The system is inoperable. This failure is due to Hansen's software failure, not related to database or system difficulties.

b) **Category II – Key Hansen component failure.** One or more Hansen modules or functions do not work. In this case core functionality remains, however the system is not fully operable. It might not print, for example.

c) **Category III – Minor Hansen failure or defect.** A calculation does not properly function, printing might not be available for one feature, indexing might not have full functionality. These generally center on a configuration issue or error. The system works and work-around may be used.

d) **Category IV – Defect.** A feature or change in Hansen functionality desired by Customer is not available or needs redesign or a misspelling or incorrect link is encountered. Full functionality remains available.

#### **9.0 Response Goals and Escalation.**

Response goals are based upon the Category and Criticality of the problem. Hansen will use commercially reasonable efforts to meet the following response goals, provided that Customer understands and acknowledges that Hansen will not meet response goals in all cases:

a) Response goals for Category I will be within three (3) business hours of initial reporting (during Hansen Customer service hours). Hansen will provide standard technical telephone support to resolve the problem.

b) Response goals for Category II will be within five (5) business hours of initial reporting (during Hansen Customer service hours). Hansen will provide standard technical telephone support to resolve the problem.

c) Response goals for Category III issues will be within twenty-four (24) business hours of initial reporting. Defects of this nature are usually resolved through installation of new software or "bug fixes," or changes in the customized system configuration.

d) Responses for Category IV issues will be addressed as enhancement requests and minor corrections. These will be distributed in standard software update releases.

**Service Escalation.** In cases where a solution cannot be provided to restore major functionality within six working hours after receipt of the initial call (Categories I and II), Hansen will assign its technical and programming team to resolve the difficulty. If the difficulty cannot be resolved, Hansen technical personnel may be dispatched to the site at Hansen's discretion and additional fees may apply. Customer will provide on-site technical staff support, access and expertise to assist Hansen, regardless of the time of day or standard work schedule. In all occurrences of Category I and II issues, Hansen will endeavor to restore system functionality as soon as possible.

Hansen will use electronic delivery of files and software patches where possible, or overnight delivery if required. In cases of system failures (Categories I and II) next flight out delivery of media will be made. Customer will be responsible to take delivery at the closest practical airport.

Category III issues will be resolved as rapidly as practical provided the issue causes a degradation in system performance or significantly decreases functionality. Electronic delivery of new software or additional files may be appropriate. In cases where files are too large for satisfactory electronic delivery, overnight mail will be used.

Category IV issues will be reviewed and resolutions will be distributed through standard upgrade and update distributions. Enhancement suggestions should be made in writing and sent to the Hansen Help Desk.

All reports of system problems and suggestions for enhancements should be referred to the Hansen Help Desk, 1-800-8HANSEN. These calls will be logged into the system and dispatched to the appropriate work groups. In the event the Hansen Help Desk cannot be reached through the toll free number, the Hansen general number should be used, or e-mail to [helpdesk@hansen.com](mailto:helpdesk@hansen.com).

If satisfaction is not received, the complaint should be directed to the Hansen Help Desk for further escalation as necessary.

#### **10. Remote Access.**

Customer shall, at Hansen's request, provide Hansen with the right of remote access to the hardware on which the Licensed Program is installed, so as to enable Hansen to monitor the operation of the Licensed Program. Such remote access shall be used for SMA purposes only, and software used for such access shall be as mutually agreed between Hansen and Customer.